

**IN THE UNITED STATES DISTRICT COURT
OF THE DISTRICT OF COLUMBIA**

BUZZFEED INC.,
111 East 18th Street, 13th Floor
New York, NY 10003

Plaintiff,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY,**
2707 Martin Luther King Jr. Avenue SE
Washington, D.C. 20528

**U.S. IMMIGRATION & CUSTOMS
ENFORCEMENT,**
500 12th St., SW
Washington, D.C. 20536

Defendants.

Case No. 1:19-cv-03295

COMPLAINT

1. Plaintiff, BUZZFEED INC., brings this Freedom of Information Act suit to force Defendants U.S. DEPARTMENT OF HOMELAND SECURITY and U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT to produce records pertaining to ICE's use of Risk Classification Assessment (RCA).

PARTIES

2. Plaintiff BUZZFEED INC. is a member of the media and made the FOIA requests at issue in this case.

3. Defendant U.S. DEPARTMENT OF HOMELAND SECURITY ("DHS") is a federal agency subject to the Freedom of Information Act, 5 U.S.C. § 552.

4. Defendant U.S. IMMIGRATION & CUSTOMS ENFORCEMENT ("ICE") is a component of DHS and is subject to the Freedom of Information Act, 5 U.S.C. § 552.

JURISDICTION AND VENUE

5. This case is brought under 5 U.S.C. § 552(a)(4)(B) and presents a federal question conferring jurisdiction on this Court. *See* 28 U.S.C. § 1331.

6. Venue is proper under 5 U.S.C. § 552(a)(4)(B).

AUGUST 1, 2018, FOIA REQUEST (DOCUMENTATION)

7. On August 1, 2018, BUZZFEED submitted a FOIA request to ICE for “all documents produced during this modification of the Risk Classification Assessment (RCA) containing the words or phrases ‘Risk Classification Assessment,’ ‘RCA,’ or ‘algorithm.’” Exhibit A.

8. BUZZFEED also requested a fee waiver for this request. Exhibit A.

9. On August 13, 2018, ICE acknowledged receipt of the request and assigned reference number 2018-ICFO-55635 to the matter. ICE also sought a 10-day extension. Exhibit B.

10. On December 18, 2018, ICE responded to the request and “determined that 21 pages will be released in their entirety.” Exhibit C.

11. On December 19, 2018, BUZZFEED sought clarification because the documents released on December 18, 2018, contained extensive redactions. Exhibit D.

12. After additional emails between the parties to clarify confusions, on February 11, 2019, ICE provided a “final response” and claimed that a follow-up search produced ten pages responsive to BUZZFEED’s request. ICE released 5 pages in their entirety and withheld portions of the other 5 pages “pursuant to Exemptions b(5), b(6), b(7)(C), b(7)(E) of the FOIA.” The ten pages appear to come from the same document as was released on December 18, 2018, with only minor modifications to the redactions. Exhibit E.

13. On March 15, 2019, BUZZFEED appealed ICE’s denial letter. Exhibit F.

14. On April 8, 2019, ICE acknowledged receipt of the appeal and assigned reference number 2018-ICAP-00303 to the matter. Exhibit G.

15. On April 16, 2019, ICE determined that the withheld exemptions were proper and exempt from disclosure. ICE also determined that “new search(s) or, modifications to the existing search(s), could be made” and remanded the request to the ICE FOIA Office for “processing and re-tasking to the appropriate agency/office(s) to obtain any responsive documents.” Exhibit H.

16. ICE has not issued a determination regarding the remanded request.

17. As the date of this filing, ICE has not produced all records responsive to BUZZFEED’s request.

AUGUST 1, 2018, FOIA REQUEST (CODE)

18. On August 1, 2018, BUZZFEED submitted a FOIA request to ICE for “copies of the code implementing the Risk Classification Assessment (RCA) that is part of the Enforcement Integrated Database (EID).” Exhibit I.

19. Plaintiffs also requested a fee waiver for this request. Exhibit I.

20. On October 3, 2018, ICE acknowledged receipt of the request and assigned reference number 2019-ICFO-02002 to the matter. ICE also sought a 10-day extension. Exhibit J.

21. On June 23 and June 24, 2019, ICE produced records pertaining to the code that implements the Risk Classification Assessment (RCA). Exhibit K.

22. After notifying ICE that the websites were inaccessible and asking for clarification on the matter, BUZZFEED appealed the response on the grounds that ICE has “erroneously responded that the information is publicly available.” Exhibit L.

23. On July 30, 2019, ICE acknowledged receipt of the appeal and assigned reference number 2019-ICAP-00475 to the matter. ICE denied BUZZFEED's appeal. Exhibit M.

24. In the letter, ICE claimed that "the links included in the ICE FOIA Office's June 23, 2019 letter not only were provided in error but also are not responsive to your request." ICE further claimed that the records BUZZFEED requested are "law enforcement sensitive" and "are being withheld pursuant to FOIA Exemption 7(E)." Exhibit M.

25. As the date of this filing, ICE has not produced all records responsive to the request.

AUGUST 3, 2018, FOIA REQUEST (DATA)

26. On August 3, 2018, BUZZFEED submitted a FOIA request to ICE for "[a]ll data used by Immigrations and Customs Enforcement as inputs to the Risk Classification Assessment (RCA)" and "[a]ll data output by the RCA." Exhibit N.

27. Plaintiffs also requested a fee waiver for this request. Exhibit N.

28. On August 15, 2018, ICE acknowledged receipt of the request and assigned reference number 2018-ICFO-56011 to the matter. ICE also sought a 10-day extension. Exhibit O.

29. Over the next few months, BUZZFEED asked ICE for an update on the request and an estimated completion date. Exhibit P.

30. ICE has not issued a determination regarding this request.

31. As the date of this filing, ICE has produced no records responsive to the request.

COUNT I – AUGUST 1, 2018 ICE'S FOIA VIOLATION (DOCUMENTATION)

32. The above paragraphs are incorporated herein.

33. ICE is a component of DHS and is subject to FOIA.

34. The requested records are not exempt under FOIA.

35. ICE has refused to produce the requested materials in a timely manner.

COUNT II – AUGUST 1, 2018 ICE’S FOIA VIOLATION (CODE)

36. The above paragraphs are incorporated herein.
37. ICE is a component of DHS and is subject to FOIA.
38. The requested records are not exempt under FOIA.
39. ICE has refused to produce the requested materials in a timely manner.

COUNT III – AUGUST 3, 2018 ICE’S FOIA VIOLATION (DATA)

40. The above paragraphs are incorporated herein.
41. ICE is a component of DHS and is subject to FOIA.
42. The requested records are not exempt under FOIA.
43. ICE has failed to produce the requested materials in a timely manner.

WHEREFORE, Plaintiff asks the Court to:

- i. declare that Defendants have violated FOIA;
- ii. order Defendants to conduct a reasonable search for records and to produce the requested records;
- iii. enjoin Defendants from withholding non-exempt public records under FOIA;
- iv. award Plaintiff attorneys’ fees and costs; and
- v. award such other relief the Court considers appropriate.

Dated: October 31, 2019

RESPECTFULLY SUBMITTED,

/s/ Matthew V. Topic

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